asserts an estoppel must show reliance on the representation; but when it is asserted by a class, as creditors, it is generally held that convenience demands a broader view;[12] and express reliance need not be affirmatively shown in each specific instance. When the problem arises after insolvency most American courts have rested upon laches in denying relief,[13] but when the rights of subsequent creditors are concerned, laches would seem to be merged in estoppel, and, instead of being a basis for decision, to be really but matter of aggravation.[14] Since the stockholder has represented that he is responsible for corporate obligations to the extent of his subscription, the question is, whether A, fraudulently induced by B to make a representation, can later defend against C, who has relied on the representation, by setting up B's fraud. Stated in this way, the shareholder's contention cannot be sustained.[15] This reasoning is, of course, wholly inapplicable when the only creditors whose rights are at issue base their claims on obligations incurred before the subscription was made. These existing creditors parted with nothing on the faith of the representation, and cannot assert priority on the ground of estoppel,[16] although laches may make their rights superior to those of a non-diligent shareholder.[17] But the diligence of the stockholder cannot detract from the right of subsequent creditors who have relied on the subscription.[18] The result may further be placed upon the ground that where one of two innocent persons must suffer by the act of a third person, he who put it in the power of the third person to inflict the injury, must bear the loss.[19]

STATE INSOLVENCY LAWS AND THE NATIONAL BANKRUPTCY ACT.—By the Constitution of the United States it is said that Congress "shall have power to establish uniform laws on the subject of bankruptcies."[1] It has long been well settled that the power of Congress, being per-

[12]Ewart, Estoppel, 141 *et seq.* The courts will protect the rights of creditors even though they are not parties to the particular action. Dunn *v.* State Bank (1894) 59 Minn. 221.

[13]Upton *v.* Englehart (U. S. 1874) 3 Dill. 496; Howard *v.* Turner (1893) 155 Pa. 349.

[14]Park *v.* Kribs (1900) 24 Tex. Civ. App. 650.

[15]Ewart, Estoppel, 94 *et seq;* Burleson *v.* Davis (Tex. 1911) 141 S. W. 559; see Hinkley *v.* Sac Oil Co. (1906) 132 Ia. 396; but see Litchfield Bank *v.* Peck (1860) 29 Conn. 384. A somewhat analogous situation is presented when a pledgee secures a transfer of stock to his own name. Under such circumstances he is liable as a shareholder, Rosevelt *v.* Brown (1854) 11 N. Y. 148, unless the corporate books apprise creditors of his real interest. Pauly *v.* State etc. Trust Co. (1897) 165 U. S. 606.

[16]Beale *v.* Dillon (1896) 5 Kan. App. 27; Savage *v.* Bartlett *supra.*

[17]See Newton *v.* National Bank of Newbegin (1896) 74 Fed. 135. The standard of diligence required where creditors are concerned may well be higher than when the corporation alone is involved. See Duffield *v.* Barnum etc. Works *supra.*

[18]Where a shareholder is under a direct statutory liability to creditors, 12 COLUMBIA LAW REVIEW 636, 742, it is even clearer that the creditor should prevail; since it cannot be claimed that he is merely asserting a corporate right.

[19]See Gress *v.* Knight (1910) 135 Ga. 60.

[1]Art. 1, § 8.

missive, is not exclusive,[2] and that, in the absence of its exercise, states are free to legislate upon the subject.[3] It is also established that even when Congress has exercised the power thus granted, the states are not absolutely precluded from legislating in the general field of bankruptcy and insolvency, but may enact valid insolvency laws concerning persons and subjects not within the purview of the congressional enactment.[4] The reason for this is clear, for where the two statutes do not purport to operate upon the same persons and subjects, there can be no possible conflict between the two. For example, prior to the Amendment of 1910, the voluntary features of the National Act were inapplicable to corporations, and since that date certain classes of corporations are expressly excluded from the operation of both the voluntary and involuntary features, and accordingly it has been held prior to 1910, that the state laws could provide voluntary insolvency for corporations,[5] and since that date, both voluntary and involuntary insolvency for such corporations as are not within the scope of the federal enactment.[6] So also, farmers and wage earners can be forced into involuntary insolvency by state law, since the involuntary features of the federal law do not apply to them.[7]

When both the National Bankruptcy Act and the state insolvency laws purport to operate upon the same persons and subjects a more difficult question is presented. Since the constitutional grant of power is for the purpose of establishing uniform laws, the conclusion seems well-nigh irresistible that when this power has been exercised by Congress, any state law purporting to act upon the same persons and subjects must *ipso facto* fall, for it seems essential to such uniformity that there should not be co-existent two systems for the judicial administration of the property of insolvent debtors.[8] Such, by the weight of authority, would seem to be the law, both as to state insolvency laws which purport to discharge the debtor,[9] and as to those which do not,[10] so long as the state law provides a system for the judicial administration of the property of an insolvent debtor. Although it has been held in some cases that the national legislation does not suspend the state laws until

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[2]Sturges *v.* Crowninshield (1819) 4 Wheat. 122, 196.

[3]Odgen *v.* Saunders (1827) 12 Wheat. 213, 281.

[4]Old Town Bank *v.* McCormick (1902) 96 Md. 341; Herron Co. *v.* Superior Court (1902) 136 Cal. 279.

[5]Randolph *v.* Scruggs (1902) 190 U. S. 533.

[6]Herron Co. *v.* Superior Court *supra.*

[7]Old Town Bank *v.* McCormick *supra.* For other examples of cases not within the scope of the National Act, and therefore subject to state legislation, see Shepardson's Appeal (1869) 36 Conn. 23; Scully *v.* Kirkpatrick (1875) 79 Pa. 324; McCullough *v.* Goodhart (Pa. 1899) 8 Dist. Rep. 378; Jordan, Marsh & Co. *v.* Hall (1869) 9 R. I. 218; Hawkins *v.* Learned (1875) 54 N. H. 333.

[8]Griswold *v.* Pratt (1845) 50 Mass. 16; Harbaugh *v.* Costello (1900) 184 Ill. 110.

[9]Duffy *v.* His Creditors (1909) 122 La. 600; Moody *v.* Development Co. (1908) 102 Me. 365; VanNostrant *v.* Carr (1870) 30 Md. 128; *Ex parte* Eames (1842) 2 Story 322; *re* Etheridge Furniture Co. (1899) 92 Fed. 329; see Martin *v.* Berry (1869) 37 Cal. 208.

[10]Matter of Reynolds (1871) 8 R. I. 485.

resort to the federal act has been had by the filing of a petition,[11] this view, besides defeating that uniformity which the National Act was designed to establish, may also be opposed on the ground that it permits expensive proceedings to be had under one law, subject to being nullified by a resort at the option of either party to the other.

It is true, however, that the right of a debtor to make a voluntary common law assignment for the benefit of his creditors is not affected by the passing of a national bankruptcy act,[12] and that state assignment laws which merely prescribe the methods of making such an assignment may stand in the face of federal legislation, although other provisions of a state insolvency system of which they form a part must fall.[13] Such assignments are valid until attacked by appropriate proceedings under the federal law.[14] The reason for this distinction will be found in the fact that such assignments gain their vitality from the free act and deed of the debtor, and would exist entirely independent of any state legislation, while state insolvency proceedings, on the other hand, depend for their potency on a positive system of insolvency inaugurated by the state.[15] The National Bankruptcy Act does not affect the common law rights of individuals unless they come into direct conflict with its operation, but it is not at all inconsistent to hold that state laws are *ipso facto* suspended by the federal act, even though the latter have not been invoked in the particular case in question.

Accordingly the court in the recent case of *Continental Building and Loan Ass'n* v. *Superior Court* (Cal. 1912) 126 Pac. 476 was undoubtedly correct both in its suggestion that all state insolvency laws are *ipso facto* suspended by the National Bankruptcy Act, and in its holding that provisions which look to the winding up of corporations for acts having no reference to insolvency are not affected thereby, even though the means adopted are those frequently applied to insolvency proceedings.

RIGHT OF LABOR UNIONS TO STRIKE FOR THE ENFORCEMENT OF THE CLOSED SHOP.—The right of every man to be free from molestation in the pursuit of his vocation[1] or in the conduct of his business,[2] prohibits any interference with either unless some justification is shown. Such a justification is the inherent right of an employer to conduct his busi-

[11]Reed Bros. *v.* Taylor (1871) 32 Ia. 209; Maltbie *v.* Hotchkiss (1871) 38 Conn. 80; Jensen-King-Bird Co. *v.* Williams (1904) 35 Wash. 161; Louisville Co. *v.* Landman (1909) 135 Ky. 163. It is to be noted that in all these cases save that last cited, the court was considering merely a voluntary assignment regulated by state statute, though the language used indicates a broader application of the rule laid down.

[12]Pogue *v.* Rowe (1908) 236 Ill. 157; Reed *v.* McIntyre (1878) 98 U. S. 507; Cook *v.* Rogers (1875) 31 Mich. 391; Mayer *v.* Hellman (1875) 91 U. S. 496; Bostwick *v.* Burnett (1878) 74 N. Y. 317.

[13]Randolph *v.* Scruggs *supra;* Binder *v.* McDonald (1900) 106 Wis. 332.

[14]Hilliard *v.* Shoe Co. (1903) 76 Vt. 57; Mayer *v.* Hellman *supra;* Thompson *v.* Shaw (1909) 104 Me. 85.

[15]*In re* Sievers (1899) 91 Fed. 366; Mayor *v.* Hellman *supra.*

[1]Note to Reynolds *v.* Cassidy (Mass. 1908) 17 L. R. A. [N. S.] 162; Perkins *v.* Pendleton (1897) 92 Me. 166; Hodge, Wrongful Interference with Third Parties, 28 Am. L. Rev. 47.

[2]8 COLUMBIA LAW REVIEW 496; Folsom *v.* Lewis (1911) 208 Mass. 336; Printing Co. *v.* Cassidy (1902) 63 N. J. Eq. 759, 764.